

## CLIENT ACTION BULLETIN

March 7, 2008

CAB 08-07

### PBGC Proposes New Filing Standards for Underfunded Plans

**SUMMARY** The Pension Benefit Guaranty Corporation (PBGC) has issued a proposed rule on the annual actuarial and company financial reports that single and multiple employer defined benefit pension plans must file if they are underfunded by a certain threshold set by the Pension Protection Act (PPA). The "Form 4010 filings" are submitted on a controlled group basis, necessitating a review of all defined benefit plans sponsored by members within the controlled group. The new rules will cause some companies to become first-time filers (e.g., because the total underfunding of the plan(s) was never more than \$50 million, but is in excess of \$15 million and an individual plan is less than 80% funded). The modified rules will also eliminate the filing requirement for other firms (e.g., those with aggregate unfunded liabilities exceeding \$50 million but with no plan less than 80% funded). The proposed rule also explains the additional information that underfunded plans must furnish to the PBGC.

The PBGC proposes that the new filing rules apply to all "information years" beginning on or after January 1, 2008, and thus would affect filings submitted April 15, 2009, at the earliest. Plans such as those sponsored by commercial airlines and government contractors that were granted special relief under PPA are not given a delay for the new reporting standards, and multiemployer plans are not subject to these filings requirements.

#### DISCUSSION **Application of the New Definition of "Underfunded" Plan**

Pension plans that are significantly underfunded must annually report actuarial and financial information to the PBGC using Form 4010. Prior to the PPA, the filing requirement applied if the total aggregate plan underfunding within an employer's controlled group exceeded \$50 million, or if any single plan in the controlled group possessed outstanding IRS funding waivers totaling more than \$1 million or missed a required contribution of at least \$1 million. Starting in 2008, the \$50 million "gateway" test is replaced by a standard that considers the lowest funded percentage of any plan within the employer's controlled group. When the funded percentage of any plan drops below 80% and the total funding shortfall among all the underfunded plans within the controlled group exceeds \$15 million, the Form 4010 filing is required. A multiple employer plan is tested similarly to a single employer plan, but only the 10 largest contributing sponsors need to file their respective company's financial information when the Form 4010 is required.

#### **"Information Year" Reporting**

The PBGC would make no changes to the concept of reporting on a plan's "information year." The Form 4010 filing is based on the employer's fiscal year, referred as an "information year." If a controlled group's plans have varying fiscal years, the information year is the calendar year. Under the pre-PPA rules, the Form 4010 underfunding was determined as of the last day of the plan year ending within the information year using the assumptions prescribed for determining the plan's current liability. Thus, for the 2007 calendar plan year, if the aggregate funding shortfall among all members of the controlled group exceeds \$50 million at the end of 2007, then the members of the controlled group would be required to submit a Form 4010 filing by April 15, 2008 for its 2007 information year (assuming the fiscal year is also the calendar year).

#### **New Measurement Date and Liability Standard**

For fiscal years beginning after December 31, 2007, the new measurement date for the Form 4010 is the valuation date of the plan year ending within the information year. Thus, the 2008 actuarial certifications will serve as the basis for most plans to determine whether a Form 4010 must be filed in 2009. A plan sponsor also would look to the same beginning-of-2008-year assets to determine if a filing is required for both the 2007 and 2008 information years. However, the 2008 liabilities for the 2008 information year will be determined using the new PPA funding

assumptions (changed for interest and mortality). In general, if a controlled group is required to submit a Form 4010 for the year, additional liability calculations may be required for each plan to determine the underfunding on a PBGC liability basis (a more complex determination).

#### Form 4010 Filing Applies to Certain Formerly “Exempt Plans”

When a Form 4010 filing is required for a controlled group, some individual plans within the group may be exempt from furnishing detailed information. Prior to 2008, plans with fewer than 500 participants were exempt from actuarial information reporting as long as they had no outstanding funding waivers and made all required contributions on a timely basis. Under the PBGC’s proposed rule, however, such plans must also have a funding shortfall of less than \$15 million to escape the Form 4010 filing requirement.

For larger plans, the “exempt plan” status is dictated by whether the plan has a funding shortfall, using the PBGC’s more conservative assumptions for valuing the present value of accrued benefits. Plans with no PBGC underfunding are exempt from filing detailed plan information, but if they are underfunded on a PBGC liability basis – which could happen because such liabilities are measured using different interest and mortality assumptions – they are subject to the Form 4010 filing requirements.

Certain small employers within a controlled group would continue to be an “exempt entity” (and would not have to file their company’s financial information) if they are not a contributing sponsor of any nonexempt plan and their revenue, operating income, and net assets generally do not exceed 5% of the controlled group’s revenue, operating income, and net assets.

#### New Required Information on Form 4010

The PPA added three items of information plans must include if they are required to file Form 4010: the funding target determined as if the plan has been in “at-risk” status for five years; the funding target attainment percentage; and the adjusted funding target attainment percentage. Furthermore, the plan sponsor must state if and how the benefit restrictions (e.g., restrictions on lump-sum payouts, plan amendments, or benefit accruals) were applied during the information year. The proposed rule explains the new requirements and provides guidance on how to calculate each of the items. Identifying information must be provided for each member of the controlled group, along with audited financial information on each nonexempt entity in the controlled group.

## ACTION

The PBGC’s proposed rule has implications for plans that may never have submitted this filing in past years. Stand-alone companies (i.e., those not part of a controlled group) will be faced with a straight-forward, two-pronged question for their filing status: Is the plan less than 80% funded and does the amount of underfunding exceed \$15 million?

Answering the same question for a company sponsoring an underfunded plan within a controlled group is more complicated. If the response to the two-pronged question is “yes,” the company must inform its controlled group partners of the filing status; if “no,” it will need additional information from its member firms to determine its filing status. Employers within a controlled group, especially potential first-time filers, should review their respective plan’s 2007 funding level to gauge the likelihood of having to file Form 4010 for 2008. Plans that are less than 80% funded at the beginning of 2008 may need to waive a portion of their credit balances to avoid the Form 4010 filing and/or the restrictions on providing accelerated forms of payment (such as lump sums). Making an additional contribution for the 2007 plan year, especially when a single small plan is the only plan less than 80% funded, may spare the larger controlled group from additional liability calculations and the burden of furnishing company financial information to the PBGC. Plan sponsors should be routinely communicating their 2008 valuation results to their fellow controlled group members in order to collectively monitor their Form 4010 status.

For additional information about the PBGC’s proposed rule or about Form 4010 information reporting, please contact your Milliman consultant.